

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 08-4735 CW

ROSA MARTINEZ and JIMMY HOWARD, on  
behalf of themselves and all others  
similarly situated

Plaintiffs,

v.

MICHAEL J. ASTRUE, Commissioner of  
Social Security, in his official  
capacity,

Defendant.

ORDER DENYING  
PLAINTIFF'S REQUEST  
FOR IMMEDIATE EX  
PARTE RELIEF AND  
SETTING BRIEFING  
SCHEDULE ON  
PLAINTIFF'S MOTION  
FOR A TEMPORARY  
RESTRAINING ORDER

Plaintiff Rosa Martinez moves ex parte for a temporary  
restraining order directing Defendant Michael J. Astrue to  
reinstate her Supplemental Security Income benefits for October,  
2008 and each month thereafter.

A temporary restraining order may be issued without providing  
the opposing party an opportunity to be heard only if "specific  
facts in an affidavit or a verified complaint clearly show that  
immediate and irreparable injury, loss, or damage will result to  
the movant before the adverse party can be heard in opposition."  
Fed. R. Civ. P. 65(b)(1)(A). Plaintiff has not made a sufficient  
showing of immediate and irreparable harm to justify granting the

1 relief she seeks without first offering Defendant an opportunity to  
2 be heard. The effective date of the termination of her benefits  
3 was more than two weeks ago, and she has not shown that she will  
4 suffer a financial crisis if Defendant is given a modicum of time  
5 to submit an opposition to her motion.

6 Plaintiff's request for immediate ex parte relief is therefore  
7 DENIED. Defendant shall file a response to Plaintiff's motion for  
8 a temporary restraining order by 12:00 p.m. on October 21, 2008.  
9 Plaintiff may, if she wishes, file a reply by 12:00 p.m. on October  
10 22, 2008. The Court will take the matter under submission on the  
11 papers and schedule a hearing on Plaintiff's motion for a  
12 preliminary injunction as appropriate.

13 IT IS SO ORDERED.

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15 Dated: 10/17/08



16 CLAUDIA WILKEN  
17 United States District Judge  
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